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OFFICE OF PETITIONS

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In re Patent of Rubin et al. : DECISION ON REQUEST
Patent No. 7,853,411 : FOR RECONSIDERATION OF
Issue Date: December 14, 2010 : PATENT TERM ADJUSTMENT
Application No. 10/685,737 : and
Filed: October 15, 2003 : NOTICE OF INTENT TO ISSUE
Docket No. : 97,022-D1-CO : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 14, 2010 and re-submitted on January 17, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred forty-nine (1649) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred forty-nine (1649) days is **granted**.

The sole issue pertains to the three years to issue guarantee of 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) (hereinafter, "B delay"). The maximum B delay period begins on October 16, 2006, which is one day after three years after the filing of the application on October 15, 2003, and ends on December 14, 2010, when the patent issued, and is 1521 days.

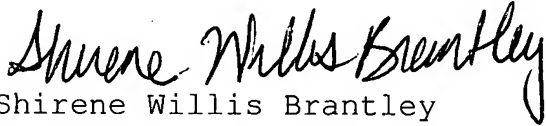
As stated in 35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." The period of B delay does not include the 624 day period beginning on November 10, 2008, the date the Notice of Appeal was filed, and ending on July 26, 2010, the date the Board mailed a decision reversing the examiner. Excluding the 624 days consumed by appellate review results in a period of B delay of 897 days (1521 - 624).

In light thereof, the correct patent term adjustment is 1649 days, which is the sum of 366 days of delay under 35 U.S.C. 154(b)(1)(A), 897 days of B Delay, and 624 days of C Delay, reduced by 238 day for Applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by one thousand six hundred forty-nine (1649) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,853,411 B2

DATED : December 14, 2010

DRAFT

INVENTOR(S) : Rubin et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1340 days

Delete the phrase "by 1340 days" and insert – by 1649 days--